

**SIEGLE & SIMS L.L.P.**

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**MEMO ENDORSED**

ERIC W. SIEGLE

August 14, 2007

JONATHAN D. SIMS

**VIA FACSIMILE**

United States District Court  
Southern District of New York  
500 Pearl Street, Room 1310  
New York, New York 10007  
Attn.: Kimba M. Wood, U.S.D.J.

**USDS SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 8/17/07**

**Re: Zhao v. City of New York et al.  
07CV.3636 (LAK)**

Dear Honorable Judge Wood:

We represent the plaintiff, Yang Feng Zhao, in the above-referenced matter. We are writing the Court with regard to the attached joint request of all parties, made by letter dated July 30, 2007, requesting a thirty (30) day extension to the deadlines prescribed in the initial Scheduling Order of this Court dated June 19, 2007, which application has not been ruled upon to date.<sup>1</sup> A copy of the initial scheduling order is attached hereto. In lieu of that application, we jointly respectfully request modification of the scheduling order as follows: that the end date for non-expert/fact discovery be changed to December 18, 2007; that expert disclosure be had thirty days after completion of non-expert/fact discovery, January 17, 2008; with rebuttal experts disclosure on February 7, 2007; expert discovery, including depositions thereof to be completed February 28, 2008; the service of summary judgment motions on March 28, 2008; and the filing

<sup>1</sup> We have contacted the chambers of the Honorable Lewis A. Kaplan twice with regard to the status of the July 30, 2007 joint application for extension of time. The first time, August 2, 2007, we were advised that there was no ruling on the application but the application was "on the Judge's desk" and that the earliest we would hear as to the status of the matter was August 8, 2007. On August 8, 2007, we checked the docket sheet for a ruling, and after seeing that none was entered, we again contacted chambers. We were advised that Judge Kaplan was unavailable until September 4, 2007, and that the application would be ruled upon at that time. When we advised chambers that this would effect a number of the scheduling dates, we were advised to make application to Magistrate Dolinger, who had also been designated to the matter. We informed chambers that while Judge Dolinger had been "designated," we did not believe discovery matters had been referred to him by Judge Kaplan. We were then referred to the "Duty" Judge for an emergency application. After confirming with Judge Dolinger's chambers that they had not been referred discovery matters herein, having been "designated" the matter by the clerk's office upon the filing of the complaint, we make said application to the Court.

of pretrial order, proposed jury instructions and requested voir dire questions - - case ready for trial on March 28, 2008. The reasons for this joint request are outlined hereafter, in addition to the initial basis for our request for extension of the scheduling order detailed in the attached July 30, 2007 correspondence.

The Court's original scheduling order requires that plaintiff provide expert witness disclosure by September 1, 2007. Plaintiff has retained the services of three experts who are in the process of reviewing the limited materials previously possessed by plaintiff prior to the lawsuit and those which were provided by defendants in their Rule 26(a) disclosure. We are advised by counsel for the defendants that they are in the process of preparing responses to plaintiff's first set of interrogatories and requests for production of documents. In addition, plaintiff has noticed the following depositions of defendants' and/or its employees:

1. Detective Richard Maline - September 4, 2007 at 2:00 p.m.
2. Detective Sergio Rivera - September 5, 2007 at 11:00 a.m.
3. Detective C. Wilkinson - September 5, 2007 at 2:00 p.m.
4. Detective Billy Milan - September 6, 2007 at 10:00 a.m.
5. Detective Nga Cheung Ng - September 7, 2007.

We are informed by counsel for defendants that due to prior scheduling commitments in other Federal civil matters, which include seven (7) court ordered depositions in September, 2007, he is not be available to conduct the depositions on said dates and instead we jointly propose the following deposition schedule:

1. Yang Feng Zhao - October 18, 2007 at 10:00 a.m.
2. Detective Richard Maline - October 25, 2007 at 10:00 p.m.
2. Detective Sergio Rivera - October 25, 2007 at 2:00p.m.
3. Detective C. Wilkinson - November 1, 2007 at 10:00 a.m.
4. Detective Billy Milan - November 6, 2007 at 10:00 a.m.
5. Detective Nga Cheung Ng - November 13, 2007 at 10:00 a.m.

Based on the foregoing, the expert disclosure required by the original scheduling order is impractical, as the reports which are required to accompany said disclosure pursuant to F.R.C.P. Rule 26(a)(2)(B) would be incomplete, as they would be lacking review of any meaningful documentary production by defendants and review of the deposition testimony of the parties herein.

*A decision on this request for extensions can await Judge Kaplan's return, except for expert witness disclosure, due currently September 1, 2007. Expert witness disclosure deadline(s) are hereby extended until Judge Kaplan has an opportunity to review the request.*

SO ORDERED, N.Y., N.Y. 8-14-07

*Kim M. Wood*  
KIMBA M. WOOD  
U.S.D.J.

Part I

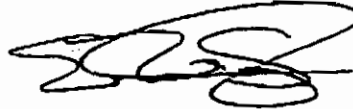
Letter to Hon. Kimba M. Wood  
re: Zhao v. City of New York  
August 14, 2007

Accordingly, all parties respectfully request the modifications to the scheduling order detailed above herein.

No prior request for this relief has been made by any party prior hereto other than that detailed above. We have spoken with counsel for defendants who joins in this application.

Respectfully submitted,

**SIEGLE & SIMS L.L.P.**

A handwritten signature in black ink, appearing to read 'ES', with a stylized flourish underneath.

Eric W. Siegle

cc: John H. Graziadei, A.C.C. (Via Facsimile)

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ERIC W. SIEGLE

July 30, 2007

JONATHAN D. SIMS

**VIA HAND DELIVERY**

United States District Court  
Southern District of New York  
500 Pearl Street, Room 1310  
New York, New York 10007

Attn.: Lewis A. Kaplan, U.S.D.J.

Re: Zhao v. City of New York et al.  
07CV.3636 (LAK)

Dear Honorable Judge Kaplan:

We represent the plaintiff, Yang Feng Zhao, in the above-referenced matter. We are writing in conjunction with counsel for the CITY to respectfully request a thirty (30) day extension to the deadlines prescribed in the initial Scheduling Order of this Court dated June 19, 2007; including the dates related to joinder of additional parties and amendment of pleadings, which is August 1, 2007.

Additionally, in the event that Detectives NGA CHENG NG and BILLY MILAN don't contest service, the CITY requests, without objection from counsel for plaintiff, enlargement of the time to Answer the complaints served on co-defendants BILLY MILAN and NGA CHENG NG until August 10, 2007, as counsel for the CITY has recently learned of plaintiff's purported service on the defendants.

The basis for these requests is that since serving co-defendant's BILLY MILAN and NGA CHENG NG with the summons and complaint herein, pursuant to the instructions of counsel for CITY, at N.Y.P.D. headquarters on June 27, 2007, and July 2, 2007<sup>1</sup>, respectively, neither our office, nor counsel for the CITY, had been in communication with these defendants and CITY was not made aware of the service until July 26, 2007. We have been informed by counsel for the CITY that he is in the process of tracking down the status and sufficiency of said

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<sup>1</sup> Prior to service, counsel for CITY was informed by plaintiff that, upon information and belief, NG was retired. Subsequently, counsel for CITY learned that NG retired on July 18, 2007. MILAN is not retired and counsel for CITY learned that he is assigned to the Queens Homicide Task Force, 68-40 Austin Street, 2<sup>nd</sup> Floor, Forest Hills, New York 11378. Counsel for plaintiff was first made aware of this information today.



Letter to Hon. Lewis A. Kaplan  
re: Zhao v. City of New York  
July 30, 2007  
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service as to both defendants, which we evidence by copies of the attached summons with executed certificate of service.

Additionally, the CITY advises that on this date we will receive their disclosures pursuant to FRCP 26(a) and Counsel for plaintiff needs to review the answers by the additionally served co-defendants to assess whether amendments to the pleadings are necessary and needs to review the City's initial disclosures to assess the necessity of joining additional parties. Additionally, we will need these materials to forward to our expert witnesses, whose disclosures are to be provided on or before September 1, 2007.

Accordingly, we respectfully request a thirty (30) day adjournment of the deadlines prescribed in the June 19, 2007 Scheduling Order and enlarging defendants' MILAN and NG time to respond to plaintiff's complaint until August 10, 2007. No prior request for this relief has been made by any party prior hereto.

Respectfully submitted,

**SIEGLE & SIMS L.L.P.**



Eric W. Siegle

cc: John H. Graziadei, Asst. Corp. Couns.  
(Via Facsimile)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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Yang Feng Zhao,

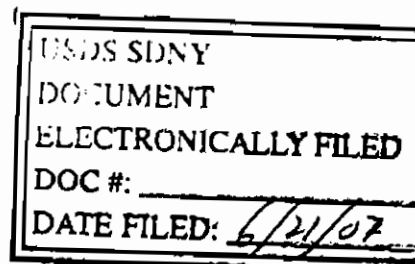
Plaintiff(s)

v.

07-cv-03636 (LAK)

City of New York,

Defendant(s).  
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### SCHEDULING ORDER

A pretrial conference having been held on June 18, 2004, it is hereby,

ORDERED that the following schedule of deadlines shall govern the further conduct of pretrial proceedings in this case:

- (a) Last date to join additional parties as of right or seek leave to do so - 8/1/07
- (b) Last date to amend pleadings as of right or seek leave to do so - 8/1/07
- (c) The parties shall make required Rule 26(a)(2) disclosures with respect to:
  - (i) expert witnesses on or before - 9/1/07
  - (ii) rebuttal expert witnesses on or before - 9/22/07.
- (d) Completion of all discovery - 10/18/07
- (e) Service of summary judgment motions - 11/18/07
- (f) Filing of pretrial order, proposed jury instructions and requested voir dire questions-- case ready for trial - 11/18/07.

The following trial materials shall be filed at least ten days before trial:

- (a) Trial brief stating the legal and factual issues and authorities relied upon and discussing any anticipated substantive or procedural problems
- (b) Motions in limine to exclude evidence.

Motions in limine shall be made returnable at the time and date fixed for trial unless made at or prior to the date fixed for filing the pretrial order, in which case they shall be made without a return date and dealt with in accordance with the Court's individual rules of procedure. Papers in opposition to motions in limine made returnable on the trial date shall be filed at least three days before trial.

Dated: June 19, 2007

  
Lewis A. Kaplan  
United States District Court